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IN THE HIGH COURT OF DELHI

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Date of Decision : 29.07.2009

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CRL. APPEAL No.307/2007

CHIRANJI LAL

...Appellant

Through : Mr.Sudhakar Singh, Advocate for
Ms.Rakhi Dubey, Advocate.

versus

STATE

...Respondent

Through : Mr. Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: PRADEEP NANDRAJOG, J. (Oral)

1. The judgment and order under challenge is dated 14.9.2006. The appellant has been convicted for the offence punishable under Section 364-A IPC; the offence punishable under Section 376 IPC and the offence punishable under Section 302 IPC.

2. The unfortunate victim of the crime is a young girl named Manju aged 9 years.

3. With reference to the testimony of PW-1 and PW-2 the learned Trial Judge has held that it stands established that ransom in sum of Rs.50,000/- was demanded over the

telephone to release Manju under threat of physical harm to her. With reference to the testimony of Manish Gaur PW-6 the learned Trial Judge has held that it stands proved that on 25.11.2001 the appellant and the deceased had stayed in an inn at Jodhpur. With reference to the testimony of Gafur Khan PW-10, ASI Swarup Singh PW-11 and Inspector Narayan Singh PW-15 the learned Trial Judge has held that it stands established that the dead body of Manju was for the first time noted and hence recovered on 30.11.2001 from a spot near the railway line within the jurisdiction of PS Pokharan, District Jaisalmer, Rajasthan and that footprints were lifted in a mould as recorded in the memo Ex.PW-11/C, which footprints, with reference to the imprints of the sole tallied with the sole of the slippers worn by the appellant when he was arrested near Pokharan Railway Station on 5.12.2001. With reference to the post-mortem report Ex.PW-14/A and the testimony of Dr.S.L.Jangin, the learned Trial Judge has held that it stands established that Manju was raped before she died. The learned Trial Judge has also referred to the report Ex.PW-20/E of the Forensic Science Laboratory as per which the vaginal cervical swab of the deceased taken by PW-14 showed presence of human semen.

4. Manju aged 9 years could not be found by her parents on 23.11.2001 till late evening. Her father Sita Ram

PW-2 went to the police station and lodged a missing persons report as per DD No.18A, Ex.PW-8/A.

5. Wireless message was flashed to inform all missing persons' squads about Manju being missing.

6. The father of Manju suspected that the appellant had kidnapped Manju, for the reason, the appellant was related to Manju's father; being the son of his paternal uncle, and was missing from his house since 23.11.2001. Manju's father went to the police station and his statement Ex.PW-2/E noting said fact was recorded by SI Ajit Malik and pursuant thereto the FIR Ex.PW-5/A was registered for an offence punishable under Section 363 IPC. The appellant was named as a suspect.

7. No headway could be made by the police at Delhi. A telephone was received on 2.12.2001 at telephone No.2174122 by Madan Lal PW-1 who was told to convey to Sita Ram, the father of Manju, that Manju was in the custody of the caller and that he would hear from the caller what next to do. Madan Lal informed said fact to Sita Ram. Another call was received at the said number and Madan Lal handed over the phone to Sita Ram. The caller demanded Rs.50,000/- to release Manju and threatened that Manju would be harmed if the money was not paid. Immediately, Sita Ram informed said fact to the police which was noted vide DD No.11-B, Ex.PW-20/B.

8. Another call was received informing that the ransom should be paid near Pokharan Railway Station District Jaisalmer on 5.12.2001.

9. A raiding party consisting of Inspector Abhirup Banerjee PW-20, SI Kailash Chand PW-19, Const.Vinod PW-16, HC Ramesh PW-18 and Const.Babu Lal (not examined) was constituted. Accompanied by the father of the girl i.e. Sita Ram and Madan Lal PW-1 they all left for Pokharan in the night of 3.12.2001 and reached Pokharan the next day.

10. As these events were unfolding in Delhi, unknown to the parents of Manju and the police at Delhi, certain events were unfolding in Pokharan and they related to Manju.

11. Gafur Khan PW-10, deployed as a key man to check railway lines at Pokharan, saw the dead body of a young girl at around 12:00 noon on 30.11.2001. He passed on the information to Ugam Singh PW-4, who in turn informed the local police. ASI Swarup Singh PW-11 received the information from Ugam Singh and before proceeding to the spot where the dead body was seen informed Inspector Narayan Singh PW-15. Both the police officers reached the spot and saw the dead body of a young girl wearing coffee coloured printed frock and a yellow pullover. They noted footprints on the loose wet soil leading upto the dead body. They summoned a photographer who took photographs of the deceased as also the footprints on the loose wet soil. Using plaster of paris, the police officers

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lifted the mould of the footprints. The dead body was seized and sent for autopsy. A board consisting of Dr.U.S.Sodha, Dr.R.P.Bissa and Dr.S.N.Jangin was constituted for the post-mortem which was conducted on 1.12.2001. They noted ligature marks around the neck. Hyoid bone was fractured. Hymen was absent. Multiple tear injuries on the vagina were noted. It was opined that the young girl, who was then unidentified, was raped before she was murdered. Cause of death was opined to be asphyxia due to strangulation. The horrifying death of the young girl received extensive media coverage in the local newspapers published and printed in District Jaisalmer, but nobody came forward to give any clues to the local police at Pokharan.

12. Needless to state, an FIR Ex.PW-15/A, for the offence of rape and murder was registered at the local police station in Pokharan. At the spot where the dead body of the unfortunate young girl was found, conducting spot proceedings, the rough site plan Ex.PW-15/C was prepared by Inspector Narayan Singh recording the spot where the dead body was found near a railway line and the spot where the footprints were seen on loose moist soil. The seizure of the dead body of the young girl was recorded in the seizure memo Ex.PW-4/B.

13. The date 5.12.2001 arrived, being the date notified by the caller for ransom to be delivered near railway station at

Pokharan. The raiding party consisting of the police officers names whereof have been noted in para 9 above concealed themselves. Sita Ram the father of the girl carried a bag in his hand containing fake money. The time was around 10:30 AM. Sita Ram saw the appellant approaching him. He gave the pre-agreed signal to the raiding party to spring out from their hiding places. The police personnel pounced upon the appellant and apprehended him at the spot. They interrogated him. Inspector Abhirup Banerjee recorded the statement Ex.PW-1/A made by the appellant as per which he confessed to the crime of having kidnapped Manju as also demanded ransom for her release. He admitted having raped Manju and thereafter having murdered her, stating that he could not have left Manju alive for had she survived as an eye-witness his fate was sealed. He disclosed in his statement that he could take the police officers to the place where he had thrown the body of Manju. The appellant also disclosed that he and Manju had stayed at an inn in Jodhpur and that he can show the inn to the police officers.

14. Since the police personnel from Delhi expected to recover the dead body of Manju from the place where they would have been led by the appellant, before proceeding for the spot they gave information at the local police station requiring assistance from the local police. Thus, the police team from Delhi proceeded independently to the undisclosed

destination where the appellant would have led them to and simultaneously ASI Swarup Singh PW-11 left the police station on being informed of the presence of the team of police officers from Delhi to reach railway station Pokharan. The appellant led the police personnel to the same spot from where the body of Manju was seized by the local police at Pokharan on 30.11.2001 as recorded in the pointing out memo Ex.PW-1/D.

15. In the meanwhile, Inspector Narayan Singh PW-15, the SHO of PS Pokharan also reached the spot. He produced the photographs of the dead girl which were taken at the same spot on 30.11.2001 being Ex.PW-3/A1 to Ex.PW-3/A6 and Ex.PW-20/1 to Ex.PW20/4, which included the photographs of the footprints taken from near the spot where the body of Manju was found. Sita Ram and Madan identified the dead body of the young female as that of Manju. Inspector Narayan Singh PW-15 had a hawk's eye. He noticed that the imprint created on the soil by the sole of the slippers worn by the accused were similar to the footprints they had seen on 30.11.2001 and in respect whereof mould by using plaster of paris were lifted. Accordingly, the slippers worn by the appellant were seized as recorded in the memo Ex.PW-1/C.

16. The appellant was produced before the Area Magistrate and transit remand was obtained. He was taken to Jodhpur. He led the police team to 86 Jaswant Sarai near
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railway station Jodhpur and stated that he and Manju had stayed at the said sarai on 25.11.2001. Manish Gaur PW-6, the nephew of Rajender Gaur, the proprietor of the inn, handed over a register Ex.P-14 which was seized vide memo Ex.PW-6/A by Inspector Abhirup Banerjee. His statement was recorded as per which he informed that he was student of B.A.Final Year in Jodhpur and the inn belonged to his uncle Rajender Gaur, in whose absence he used to manage the inn and that the appellant along with a young girl aged 7 – 8 years who was calling appellant 'Papa' had stayed in the inn. The girl was wearing a printed frock and a mustered coloured pullover. He identified the entry Mark 'A' in the register as evidencing the stay of the appellant along with the young girl in the inn and stated that in his presence the appellant had signed in the register at point 'B' against the entry Mark 'A'.

17. Inspector Abhirup Banerjee seized, as recorded in the seizure memos Ex.PW-13/G and Ex.PW-19/B, the record of the inquest proceedings, the entries recorded in the daily diaries as also the FIR registered at PS Pokharan for the obvious reason the FIR registered at Pokharan stood transferred to Delhi since the first offence pertaining to Manju i.e. kidnapping took place at Delhi.

18. After a few days the FSL report Ex.PW-20/E was received pertaining to the vaginal cervical swab taken after

post-mortem was conducted on the dead body of Manju as per which semen was detected on the swab.

19. To cut the long story short, the various police officers whose names have been noted herein above proved the respective role played by them as also proved the various memos prepared from time to time and the seizures effected. The father of the girl Sita Ram PW-2 and his neighbour Madan Lal PW-1 stood their ground and proved having received ransom calls under threat of harm to Manju. The proof of dead body of Manju being seized from the spot shown in the site plan Ex.PW-15/B was duly proved through the testimony of Inspector Narayan Singh PW-15 and ASI Swarup Singh PW-11 who also proved having lifted the footprints from near the place where the dead body of Manju was seized. The various officers of Delhi Police proved the apprehension and the formal arrest of the appellant at near Railway Station Pokharan; his disclosure statement and the pointing out by him of the place where the dead body of Manju was seen. Manish Gaur PW-6 deposed and proved that the register Ex.P-14 was maintained pertaining to the guests who stayed at the inn of his uncle. He proved the entry Mark 'A' in the register showing that on 25.11.2001 the name of the appellant was shown as a visitor who had stayed in the inn on 25.11.2001. He proved the signatures of the appellant at point 'B' against the entry Mark 'A'. He deposed that the appellant was accompanied by a

young girl aged 7 – 8 year who was addressing him as ‘Papa’ and was wearing a printed frock and a mustered coloured pullover. He deposed that the photograph shown to him in Court i.e. the photograph of Manju was of the same girl whom he had seen in the company of the appellant and had stayed in his inn along with the appellant on 25.11.2001.

20. Indeed, it is apparent that the case against the appellant is fairly watertight. The recovery of the register Ex.P-14 pursuant to the disclosure statement of the appellant attracts Section 27 of the Evidence Act. It was not within the knowledge of the investigating officer that the appellant had stayed in an inn at Jodhpur. Information pertaining to the stay at the inn in Jodhpur was given by the appellant. Subsequent facts proved the truthfulness of the information inasmuch as the register Ex.P-14 was seized from the inn at Jodhpur on being handed over by Manish Gaur who also turned out to be a witness to the appellant and the deceased staying in the inn on 25.11.2001. The register bears the signature of the appellant against the entry recording his name and address as a resident visitor in the inn. The appellant had no business to take Manju to Jodhpur without the consent and permission of her parents. It is obvious that the appellant did so without the consent of the parents of Manju and said fact alone, standing by itself, establishes that the appellant has committed the offence of kidnapping Manju. Manju being with the appellant

on 25.11.2001 requires the appellant to establish as to when he parted company with Manju. There being no explanation from his side, it is apparent that the logical presumption would be that the appellant committed two further crimes i.e. raping Manju and then killing her.

21. There is further evidence of the involvement of the appellant in the two further crimes. The same is the design of the sole of the slippers worn by the appellant when he was apprehended matching the footprints lifted from near the spot where the body of Manju was recovered.

22. The offence punishable under Section 364A IPC stands completed on the testimony of PW-1 and PW-2 who have clearly deposed that ransom calls were received. It is not a fortuitous circumstance that even before he was arrested, the appellant was named by the father of Manju as the caller demanding ransom. The appellant is the cousin of Manju's father and therefore credence has to be given to the fact that Manju's father could recognize his voice over telephone.

23. To drive a further nail into the coffin of the appellant is the fact that he was found missing since 23.11.2001 i.e. the day when Manju went missing. The last nail in the coffin is the apprehension of the appellant from near the railway station at Pokharan, the place where the ransom amount had to be paid. The appellant has rendered no satisfactory explanation as to what he was doing in Pokharan.

24. To be fair to the appellant we must note the submissions made by his counsel during hearing of the appeal in Court today and thereafter deal with the same.

25. With reference to the cross-examination of Gafur Khan PW-10 it is urged that as per Gafur Khan the dead body of the girl which he saw near the railway line on 30.11.2001 was naked. Counsel urges that the seizure memo Ex.PW-4/B prepared after the post-mortem of the girl and when her personal clothes were handed over by the doctors to PW-15 show the seizure of a frock and a sweater. Thus, counsel urges that the dead body seen by Gafur Khan and the one which was sent for post-mortem could not be of the same person.

26. With passage of time memory fades. Gafur Khan has appeared in Court on 23.4.2004 i.e. after two years and six months of his having seen the dead body of the girl. He is partially correct for the reason the photographs of the dead body of the young girl show her to be partially nude, in that, belly down, the body is exposed. The underwear has been pulled down till the knee. What is important to be noted is that the photographs of the dead body of the girl show her wearing a chocolate coloured frock and a mustered coloured sweater. In this connection the testimony of Manish Gaur PW-6 is important. He deposes that the girl whom he saw in the

company of appellant was wearing a printed frock and a mustered coloured sweater.

27. The second submission urged is that the site plan Ex.PW-15/B shows the head of the dead girl directed towards the west and the legs towards the east; whereas the memo Ex.PW-15/F shows the reverse i.e. the head pointing towards the east and the legs towards the west.

28. The argument needs to be noted and rejected for the simple reason, it is apparently a case of a writing mistake. While writing the directions in which the body was lying, the reverse of the actual has been noted.

29. To constitute the charge of rape it has to be shown that the accused was capable of sexual intercourse. To complete the narrative, we note that the appellant was medically examined and as recorded in the MLC Ex.PW-7/A it stands conclusively opined that the appellant was capable of performing sex.

30. We find no merit in the appeal which is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

JULY 29, 2009
Dharmender